114-622

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~215~~ 223

SAMUEL S. BROWN AND JAMES W. SCHOENMAKER, PLAINTIFFS IN ERROR,

vs.

JAMES D. HOUSTON, STATE TAX COLLECTOR, AND ALLEN JUMEL, STATE AUDITOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 17, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 295.

SAMUEL S. BROWN AND JAMES W. SCHOENMAKER, PLAINTIFFS IN ERROR,

vs.

JAMES D. HOUSTON, STATE TAX COLLECTOR, AND ALLEN JUMEL, STATE AUDITOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 17, 1881.

INDEX.

PROCEEDINGS HAD IN THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS.

	ORIGINAL.	PRINT.
Petition	1	1
Affidavit	5	3
Order	5	3
Bond of injunction	5	3
Document filed with petition	6	4
Answer of Houston	7	4
Testimony of Geo. F. Rootes	8	5
Statement of S. S. Brown	9	5
Order, case submitted	10	6
Judgment	10	6
Motion for appeal	11	6
Appeal bond	12	7
Certificate of the clerk	13	7

INDEX.

PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Motion to fix cause for trial	14	8
Order assinging cause for trial	14	8

	ORIGINAL.	PRINT.
Agreement to submit	15	9
Cause continued	15	9
Cause submitted	16	9
Opinion of the Court	16	10
Judgment and decree	20	11
Motion for writ error	21	12
Order granting writ of error	22	12
Writ of error	23	13
Bond for writ of error	26	14
Affidavit attached to bond	28	15
Certificate of clerk Supreme Court	28	16
Certificate of the Chief Justice	29	16
Motion for writ of error, (original)	31	16
Writ of error, (original)	32	17

8244.

1 State of Louisiana, Civil District Court for the parish of Orleans.

Samuel S. Brown et al.
v.
Jas. D. Houston, tax collector, et al. } No. 1870.

Jos. P. Hornor, esq., F. W. Baker, esq., for appellant; Whitaker & Adams, for appellee.

Supreme Court of Louisiana. Filed 9 March, 1881.
(Signed) T. M. C. HYMAN,
Dy Clerk.

State of Louisiana, parish of Orleans, Civil District Court for the parish of Orleans.

Samuel S. Brown and James W. Schoenmaker
v.
James D. Houston, tax collector, et al. } No. 1870. Civil District Court.

Petition.—Filed Dec. 30th, 1880.

To the honorable the judges of the Civil District Court for the parish of Orleans:

2 The petition of Samuel S. Brown and James W. Schoenmaker, who reside and do business in Pittsburgh, state of Pennsylvania, under the firm name of "W. H. Brown," with respect represents—

That J. D. Houston, state tax collector of the upper district of the parish of Orleans, has officially notified Brown & Jones, the agents of your petitioners in New Orleans, that they, Brown & Jones, are indebted to the state of Louisiana in the sum of three hundred and fifty-two & 80-100 dollars state tax for the year 1880 upon a certain lot of Pittsburgh coal, assessed as the property of said Brown & Jones, and valued at the sum of fifty-eight thousand eight hundred dollars; that they, said Brown & Jones, are delinquents for said tax, and that he, said tax collector, is about to seize, advertise, and sell said coal to pay said tax, as will more fully appear by reference to the said notice hereto annexed and made part hereof.

Now, your petitioners allege that they are not indebted to the state of Louisiana for said tax; that your petitioners are the sole owners of said coal and are not liable for any tax thereupon, having paid all taxes legally due for the year 1880 on said coal in the state of Pennsylvania; that said coal is simply under the care of said Brown & Jones, as the agents of your petitioners in New Orleans, for sale.

That said coal was mined in the state of Pennsylvania, and
3 was exported from said state and imported into the state of Louisiana as the property of petitioners, and is now, and

always has remained, in the original condition and never has been or become mixed or incorporated with other property in the state of Louisiana and is not subject to any tax, toll, or impost of any kind or nature whatsoever within or by the state of Louisiana or any political corporation thereof.

That at the time said assessment was made, said coal then being afloat in the Mississippi river in the parish of Orleans, in the original condition in which the same was exported from the state of Pennsylvania, your petitioners' said agents, Brown & Jones, notified the board of assessors of the parish of Orleans that said coal did not belong to them, but was owned by your petitioners and held as hereinbefore set forth, and that the same was not subject to taxation, and protested against the assessment thereof for that purpose.

That the levy, assessment, imposition or attempt to collect the said tax or any tax, toll, impost or burden of any kind or nature whatsoever upon said coal is illegal and oppressive, contrary to article first, section eight, paragraphs 1 and 3, and article first, section 10, paragraph 2 of the constitution of the United States, and that act No. 77 of the legislature of the state of Louisiana of 1880, in so far as it attempts to authorize the assessment, levy, or collection of any tax upon said property, or the seizure, advertisement and
4 sale of said property for the payment of said tax is illegal, unconstitutional, null and void, being violative of article 1, section 8, paragraphs 1 and 3, and article 1, section 10, paragraph 2 of the constitution of the United States.

That said J. D. Houston, tax collector, unless restrained by this honorable court, will proceed to seize, advertise and sell said coal to the irreparable injury of petitioners, and a writ of injunction is necessary in the premises.

That said assessment being illegal as aforesaid, Allen Jumel, auditor of public accounts of the state of Louisiana, is a necessary party hereto in order to correct said assessment, and that said assessment may be stricken from said assessment rolls.

Wherefore the annexed bond and affidavit considered, they pray a writ of injunction do issue herein, enjoining and restraining said J. D. Houston, state tax collector of the upper district of the parish of Orleans, from seizing, advertising or selling said coal or any portion thereof, or any other property for or on account of said tax assessed upon said coal; that said J. D. Houston and Allen Jumel, auditor of public accounts of the state of Louisiana, be cited herein, and after due proceedings said injunction be made perpetual, and said assessment be decreed illegal and void and be ordered stricken from the assessment rolls for the year 1880, and they pray for all general relief.

5 (Signed) JOSEPH P. HORNOR,
FRANCIS W. BAKER,
12-28-'80. *Att'ys Pet'n'rs.*

Affidavit.

FRANCIS W. BAKER, being duly sworn, says that he is one of the attorneys for plaintiff, all of whom reside out of the state; that all the facts and allegations in the foregoing petition are true and correct, and a writ of injunction is necessary in the premises, all to the best of affiant's knowledge and belief.

(Signed) FRANCIS W. BAKER.

Sworn to and subscribed before me this 30th December, 1880.

(Signed) E. A. LUMINAIS, *D'y Clk.*

Order.

Let a writ of injunction issue herein as prayed for and according to law, upon plaintiffs furnishing bond with good and solvent security in the sum of two hundred and fifty dollars.

New Orleans, December 30th, 1880.

(Signed) A. L. TISSOT, *Judge.*

Bond of Injunction.—Filed Dec. 30th, 1880.

Know all men by these presents, That we, Samuel S. Brown & Jas. W. Schoenmaker, as principals, and George F. Rootes as security, of the city of New Orleans and state of Louisiana, are held and firmly bound unto James D. Houston, tax collector, &c., in the sum of two hundred and fifty ($250) dollars, lawful money of the United States of America, to be paid to said J. D. Houston, tax col-
6 lector, &c., heirs, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents. Sealed with our seals and dated the 30th day of December, in the year of Lord 1880.

Whereas the said S. S. Brown and J. W. Schoenmaker have this day presented a petition to the honorable the Civil District Court for the parish of New Orleans praying for a writ of injunction:

Now, the condition of the above obligation is, that we, the above bound S. S. Brown and J. W. Schoenmaker and George F. Rootes, will well and truly pay to the said J. D. Houston, tax collector, &c., the defendant in said injunction, all such damages as he may recover against us in case it should be decided that the injunction was wrongfully obtained.

(Signed) SAM'L S. BROWN and
JAS. W SCHOENMAKER,
By JOSEPH P. HORNOR and
F. W. BAKER, *Att'ys.* [SEAL.]

(Signed) GEO. F. ROOTES. [SEAL.]

Document.—Filed with petition.—Filed Dec. 30th, 1880.

OFFICE STATE TAX COLLECTOR, UPPER DISTRICT
PARISH OF ORLEANS, No. 24 UNION STREET,
NEW ORLEANS, *Dec.* 20, 1880.

To BROWN & JONES, Gravier and Charles street:

SIR: You are hereby officially notified, in conformity with the
7 provisions of act No. 77 of 1880, that the state taxes assessed to you on movable property in this parish, which amount to the sum of $352.80 (the aggregate assessed value of such property being $58,800.00), fell due and should have been paid in full on or before the first day of the current month; that you became a delinquent for said taxes on such first day of December; that after the expiration of twenty days from the date of this notice, I, as tax collector of the upper district of the parish of Orleans, will advertise for sale the movable property on which the said taxes are due in the manner provided by law for judicial sales; that at the principal front door of the court-house where the Civil District Court of said parish is held, I will sell within the legal hours for judicial sales, for cash and without appraisement, such portion of the said movable property as you shall point out and deliver to me, and in case you shall not point out sufficient property that I will at once and without further delay sell for cash without appraisement the least quantity of said movable property which any bidder will buy for the amount of taxes assessed upon movable property, with interest and costs.

Respectfully yours,

J. D. HOUSTON,
State Tax Collector, Upper District Parish of Orleans.

Answer of Houston.—Filed January 14, 1881.

8 Samuel S. Brown and James W. Schoenmaker } No. 1870.
v. } Civil Dis-
James D. Houston, tax collector, et al. } trict Court.

Now comes James D. Houston, tax collector, and for answer to plaintiffs' petition denies all and singular the allegations hereof, except in so far as hereinafter specially admitted.

He admits the assessment of the tax referred to and that in default of payment thereof, after the expiration of legal delay, he proposes to seize, advertise and sell the property against which said tax is assessed, to make the amount of the tax and costs.

He alleges legal notice and demand for the payment of said tax and that said tax is lawful, due and unpaid.

Wherefore he prays to be hence dismissed with his costs and for all general relief.

(Signed) WHITAKER & ADAMS, *Att'ys.*

Testimony of Geo. F. Rootes.—Filed Feb'y 4th, 1881.

Samuel S. Brown and James W. Schoenmaker
v.
James D. Houston, tax collector, et al.
} No. 1870. Civil District Court.

GEORGE F. ROOTES, being duly sworn for plaintiffs, says:

That he is the general agent and manager of the business of the firm of Brown & Jones in this city, and has been for upwards of four years past, and knows all about their business here, and has
9 full control and charge of the same; that at the time the assessment complained of in this suit was made affiant's said firm was assessed for and had paid the state taxes due upon their capital stock, and had paid state and city licenses to do business for that year; that the coal upon which the tax complained of in this suit was levied was at the time of said assessment in the hands of Brown & Jones as agents for pl'ffs for sale, said coal having just arrived from Pittsburgh, Penn., by flat boats, and said coal was absolutely on said flat boats in which it arrived here and was afloat in the river Mississippi at the time said tax was assessed thereon; that said coal was held by said Brown & Jones to be sold for account of pl'ffs by the float-boat load, and since then more than a half of said coal has been exported from this country on foreign steamships, and the balance been sold into the interior of this state for plantation use by the flat-boat load.

(Signed) GEO. F. ROOTES.

Sworn to and subscribed before me at New Orleans this 4th day of February, 1881.

(Signed) CHAS. G. ANDRY,
Notary Public.

Statement of S. S. Brown.—Filed Feb'y 4th, 1881.

Samuel S. Brown and James W. Schoenmaker
v.
James D. Houston, tax collector, &c.
} No. 1870. Civil District Court.

Statement of Samuel S. Brown.

10 I am one of the plaintiffs in this case, the owners of the coal in question. This coal was mined in Allegany county, Pennsylvania, which mine is owned by plaintiffs; a tax two or more mills—I don't remember the exact rate—was paid on this coal in the state of Pennsylvania, as state tax thereon, in the year 1880, being the tax of 1880. A tax was also paid on this coal to the county of Allegany for the year 1880. I do not remember the rate paid to the county. I know all taxes on this coal was paid for the year 1880. This coal was shipped from Pittsburgh, Pa., in 1880, and was

received in New Orleans in its original condition, and in its original packages, and still owned by plaintiffs.

(Signed) SAM'L S. BROWN.

Order Case Submitted.—Extract from Minutes Friday, February 4th, 1881.

Samuel S. Brown and James W. Schoenmaker
v.
James D. Houston, tax collector, &c.
} No. 1870. Civil District Court.

Present—Hon. Henry L. Lazarus, judge.
This cause came on this day for trial.
Jos. P. Hornor for plaintiffs; Whitaker & Adams for def't.
After hearing evidence and counsel, said cause being submitted, the court took the same under advisement.

Judgment.—Rendered February 7th, 1881.

11 Samuel S. Brown and James W. Schoenmaker
v.
James D. Houston, tax collector, &c.
} No. 1870. Civil District Court.

In this case, for the reasons assigned by the court this day, the law and evidence being in favor of defendant—
It is ordered, adjudged, and decreed that the injunction herein issued be dissolved, and that plaintiffs' suit be dismissed with costs.
Judgment rendered February 7th, 1881.
Judgment signed February 12th, 1881.

(Signed) HENRY L. LAZARUS,
Judge.

Motion for Appeal.—As entered on the Minutes Tuesday, February 15th, 1881.

Samuel S. Brown and James W. Schoenmaker
v.
James D. Houston, tax collector, et al.
} No. 1870. Civil District Court.

On motion of Joseph P. Hornor & Francis W. Baker, attorneys for plaintiff, and on suggesting to the court that they are informed and believe that there is error to their prejudice in the final judgment herein rendered in favor of defendants on the 7th day of February, 1881, and signed on the 12th day of February, 1881, and that they desire to appeal suspensively therefrom to the Supreme Court:
It is ordered that plaintiffs be granted a suspensive appeal from said judgment, returnable on the first Monday of March, 1881, there not being sufficient time by the next return day, upon plain-
12 tiffs furnishing bond, with good and solvent security in the sum of one hundred dollars conditioned as the law directs, and that this motion be entered on the minutes of court.

Appeal Bond.—Filed Feb'y 15th, 1881.

Samuel S. Brown and James W. Schoenmaker
v.
James D. Houston, tax collector, et al.
} No. 1870. Civil District Court.

Know all men by these presents, that we, Sam'l S. Brown and W. H. Schoenmaker, as principals, and George F. Rootes, as surety, are held and firmly bound unto James T. Clark, clerk of the Civil District Court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of one hundred ($100) dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans on this day of February, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas, the above-bounded Sam'l S. Brown & W. H. Schoenmaker this day filed a motion of appeal from a final judgment rendered against them in the suit of Sam'l S. Brown & W. H. Schoenmaker, No. 1870, in the Civil District Court for the parish of Orleans, on the 7th day of February, 1881, and signed on the 12th day of February, 1881:

Now, the condition of the above obligation is such, that the above-bound Sam'l S. Brown and W. H. Schoenmaker shall
13 prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or either of them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they or either of them be cast in the appeal; otherwise that the said surety shall be liable in their or either of their place.

(Signed) SAM'L S. BROWN &
W. H. SCHOENMAKER,
By JOSEPH P. HORNOR &
FRANCIS W. BAKER. [SEAL.]
(Signed) GEO. F. ROOTES. [SEAL.]

Signed, sealed, and delivered in the presence of—

Certificate.

I, James T. Clark, clerk of the Civil District Court for the parish of Orleans, do hereby certify the foregoing nineteen pages do contain a true and complete transcript of all the proceedings had, documents filed, testimony and evidence adduced in the cause entitled Samuel S. Brown & al. *v.* James D. Houston, tax collector, & al., instituted and prosecuted under the No. 1870 of the docket of this court.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of this court on this seventh day of February, in he year of our Lord one thousand eight hundred and eighty-one,

and in the one hundredth and fifth year of the independence of the United States.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

14 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the state of Louisiana.

Samuel S. Brown et al.
v.
Jas. D. Houston, tax collector, et al. } No. 8244.

Transcript of Appeal.—Filed 9th March, 1881.

(Signed) T. McC. HYMAN,
Deputy Clerk.

Motion to fix for Trial.—Filed 14 March, 1881.

Supreme Court of Louisiana.

Brown & Schoenmaker
v.
J. D. Houston, state tax collector. } No. 8244.

On motion of appellee, by his attorneys, Whitaker & Adams, and on their suggestion to the court that appellee is herein merely a representative of the state, and that the interests of the state will be promoted by a speedy trial of the issues herein involved, and that the state is entitled to preference, it is ordered that this cause be called and fixed for trial.

Order assigning cause for trial.—Extract from the Minutes.

MONDAY, *March* 14, 1881.

The court was duly opened pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice,
15 and Félix P. Poché, Robert B. Todd, William M. Levy, Chas. E. Fenner, associate justices.

Brown & Schoenmaker
v.
Houston, tax collector, et al. } No. 8244.

On motion of Whitaker & Adams, of counsel for defendants and appellees, it is ordered by the court that this case be fixed for trial, with preference.

Agreement to submit.—Filed 20 April, 1881.

Supreme Court.

Sam'l S. Brown et als.
v.
Jas. D. Houston et al. } No. 8244.

CLERK SUPREME COURT:

Submit above case on briefs on file.

4–20–81. (Signed) JOSEPH P. HORNOR,
FRANCIS W. BAKER,
Attorneys, Plaintiff and Appellant.

(Signed) WHITAKER & ADAMS,
Attorneys for Defendant & Appellant.

Cause continued.—Extract from the Minutes.

WEDNESDAY, *April* 20, 1881.

The court was duly opened.

Present: Their Honors Edward Bermudez, chief justice, and Félix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Samuel S. Brown et al.
v.
James D. Houston, tax collector, et al. } No. 8244.

This case was ordered by the court to be continued, with preference.

16 *Cause submitted.*—Extract from the Minutes.

SATURDAY, *April* 23, 1881.

The court was duly opened.

Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Samuel S. Brown et al.
v.
James D. Houston, tax collector, et al. } No. 8244.

This case having been submitted to the court on the 20th inst., the following entry is ordered by the court to be made *nunc pro tunc:*

This case was called for trial, whereupon the same was submitted to the court by counsel for parties in interest upon the briefs and papers now on file.

Opinion of the Court.—Filed 16 May, 1881.

Samuel S. Brown et al.
v.
Jas. D. Houston, tax collector, et al. } No. 8244.

Mr. Justice TODD: The plaintiffs are appellants from a judgment of the Civil District Court of the parish of Orleans dissolving their injunction, taken out to restrain the tax collector from selling a lot of coal for taxes.

The coal was mined in Pennsylvania, was brought into this state for sale, and was duly assessed as the property of the plaintiff within the territorial limits of the district where the defendant was
17 tax collector, and where the coal was kept for sale.

The tax is restricted upon the ground that it was imposed in violation of the provisions of the constitution of the United States which declaring—

1. The citizens of each state shall be entitled to all the immunities and privileges of citizens of the several states.

2. Congress shall have power to regulate commerce with foreign powers and among the several states.

3. No state shall levy any imposts or duties on imports or exports.

First. Act 77 of 1880, under which the tax complained of was levied, provides that "annual taxes," amounting in the aggregate to six mills on the dollar of assessed valuation hereafter to be made of all property situated within the state of Louisiana, except such as is expressly exempted from taxation by the constitution, shall be collected," &c.

This act does not in its terms discriminate against the products of other states or the property of the citizens of other states, but subjects all property liable to taxation found within the state, whether of its own citizens or citizens of other states, whether imported from other states or produced here, to the same rate of taxation.

If the law exempted property of the citizens of other states, brought into the state for sale, from taxation, and at the same
18 time levied a tax on the products of the state, it would in fact show a discrimination against the citizens of the state and the products of the state.

We discover no force whatever in this ground of opposition.

Second. The coal in question was taxed in common with all other property found within the state. We held in the case of City of New Orleans v. Eclipse Towboat Company, recently decided by us, but not reported, that the clause in the federal constitution giving to Congress the power to regulate commerce with foreign nations and among the states had no immediate relation to or necessary connection with the taxing power of a state. Every tax upon property, it is true, may affect more or less the operations of commerce, by diminishing the profits to be derived from the subjects of commerce, but it does not for that reason amount to a regulation of commerce within the meaning of the federal constitution, and such is the doc-

trine laid down by the Supreme Court of the United States. (15 Wallace, 293.)

So it has been held that "a tax on property that may be the subject of commerce under congressional regulations is not a tax on commerce. Neither is a tax on property which has been the subject of such commerce, when it is taxed only as property and
19 in common with all other property within the state." (Cooley on Taxation, 62, 63; 12 Wheat., 419, 437; 8 Wall., 110; 5 Ib., 475, 479.)

The power of taxation exercised by the state with respect to the property in question does not, in the remotest degree, directly or indirectly infringe upon this constitutional provision relating to the regulation of commerce.

Third. This tax cannot be regarded as a duty or impost levied by the state on imports. To give such a construction to it and to recognize the alleged prohibition contended for would create an exemption for all goods and merchandize and property of every kind and description brought into the state for sale or use, and by such construction destroy a main source of revenue to the state.

As we had occasion to show in the case referred to, the word "imports" used in the constitution has been construed to apply not to property brought or imported from other states of the union, but solely to imports from foreign countries. (Woodruff v. Parham, 8 Wall., 122; 5 Wall., 479.) And in the case of Woodruff v. Parham it was expressly held that a uniform tax imposed by a state on all sales made in it, whether made by a citizen of such state or another state, and whether the property sold was the product of that state or another, was valid. And in the opinion rendered in
20 that case, the right of a state to tax the property itself brought to such state for sale from another was distinctly recognized and broadly stated.

Cooley, in his work on Taxation, states the same doctrine in these words: "The federal constitution provides that no state shall, without consent of Congress, lay any imposts or duties on imports or exports except what may be necessary for executing its inspection laws. But this provision has no application to articles transported merely from one state to another."

We find no error in the judgment appealed from, and it is therefore affirmed with costs.

Judgment and Decree.—Extract from the Minutes.

MONDAY, *May* 16, 1881.

The court was duly opened pursuant to adjournment. Present, their honors, Edward Bermudez, chief justice, and Félix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

His Honor Justice Todd pronounced the judgment and decree of the court in the following case:

Samuel S. Brown et al.
vs.
James D. Houston, tax collector, et al. } No. 8244.

On appeal from the Civil District Court for the parish of
21 Orleans.

We find no error in the judgment appealed from, and it is therefore affirmed with costs.

Motion for Writ of Error.—Filed 21 May, 1881.

Supreme Court of the state of Louisiana.

Samuel S. Brown et als.
vs.
J. D. Houston, st. tax col'r. } No. 8244.

On motion of Joseph D. Hornor and Francis W. Baker, of counsel for the plaintiffs and appellants herein, and upon showing to the court that said plaintiffs and appellants are informed and believe that there is error to their prejudice in the final decree herein rendered against them, and that in this case there was drawn in question the validity of a statute of the state of Louisiana and of an authority exercised thereunder, on the ground of its being repugnant to the constitution of the United States, and said decree was in favor of the validity of said statute, and that these movers desire to take a writ of error from said decree to the Supreme Court of the United States according to law:

It is ordered by the court that a writ of error be allowed to plaintiffs and appellants herein from the final decree herein rendered, to act as a supersedeas, returnable to the Supreme Court of the United States at its next regular term, the second Monday of Octo-
22 ber next, 1881, upon said plaintiffs, Samuel S. Brown and als., giving bond with good and solvent security in the sum of five hundred dollars, conditioned as the law directs, and that defendant be notified hereof.

5–20–'81.

Service accepted and notice waived New Orleans, 21st May, 1881.
(Signed) WHITAKER & ADAMS,
Attorneys for Defendants.

Order Granting Writ of Error.—Extract from the Minutes.

SATURDAY, *May* 21, 1881.

The court was duly opened. Present, their honors, Edward Bermudez, chief justice, and Félix P. Poché, William M. Levy, Charles E. Fenner, associate justices. Absent, Robert B. Todd, associate justice.

Samuel S. Brown et als.
vs.
J. D. Houston, state tax collector. } No. 8244.

On motion of Joseph P. Hornor and Francis W. Baker, of counsel for the plaintiffs and appellants herein, and upon showing to the court that said plaintiffs and appellants are informed and believe that there is error to their prejudice in the final decree herein rendered against them, and that in this case there was drawn in question the validity of a statute of the state of Louisiana and of an authority exercised thereunder, on the ground of its being repugnant to the constitution of the United States, and said decree was in
23 favor of the validity of said statute, and that these movers desire to take a writ of error from said decree to the Supreme Court of the United States according to law:

It is ordered by the court that a writ of error be allowed to plaintiffs and appellants herein from the final decree herein rendered, to act as a supersedeas, returnable to the Supreme Court of the United States at its next regular term, the second Monday of October next, 1881, upon said plaintiffs, Samuel Brown et als., giving bond with good and solvent security in the sum of five hundred dollars, conditioned as the law directs, and that defendant be notified thereof.

Writ of Error.—Filed 23 May, 1881.

Samuel S. Brown et als., plaintiffs in error,
v.
Jas. D. Houston, state tax collector, et als., defendants in error. } No. 8244.

Copy of a writ of error lodged in the clerk's office of the Supreme Court of the state of Louisiana. Copy in pursuance of the statute in such cases made and provided this 21st day of May, one thousand eight hundred and eighty-one.

(Signed) JOSEPH P. HORNOR,
Attorney of Plaintiffs in Error.

24 UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the honorable the judges of the Supreme Court of the state of Louisiana, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court of the state of Louisiana before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Samuel S. Brown and James W. Schoenmaker, plaintiffs, and James D. Houston, state tax collector, and Allen Jumel, state auditor, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their va-

lidity; or wherein was drawn in question the validity of a statute of or an authority exercised under said state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right,
25 privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission, a manifest error hath hap ened to the great damage of the said Samuel S. Brown and James W. Schoenmaker, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 21st day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Allowed by—

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the Circuit Court of the United States for the
26 *eastern district of Louisiana.*

Service accepted and citation waived.

New Orleans, 21 May, 1881.

(Signed) WHITAKER & ADAMS,
Attorneys for Defendants.

Bond for Writ of Error.—Filed 23 May, 1881.

Supreme Court of the st'e of Louisiana.

Samuel S. Brown et als.
v.
Jas. D. Houston, state tax collector, et als. } No. 8244.

Know all men by these presents that we, Samuel S. Brown and Jas. W. Schoenmaker, as principals, and Joseph P. Hornor as surety, are held and firmly bound unto James D. Houston, state tax collector, and Allen Jumel, state auditor, in the full and just sum of five hundred dollars, to be paid to the said James D. Houston, state tax collector, and Allen Jumel, state auditor, their certain attorney, executors, administrators or assigns; to which payment well and

truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. Sealed with our seals and dated this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at the Supreme Court of the state of Louis-
27 iana in a suit depending in said Circuit Court, wherein said Samuel S. Brown and James W. Schoenmaker were plaintiffs and said James D. Houston, state tax collector, and Allen Jumel, state auditor, judgment was rendered against said Samuel S. Brown and James W. Schoenmaker, plaintiffs, and the said Samuel S. Brown and Jas. W. Schoenmaker, plaintiffs, having obtained a writ of error and filed a copy thereof in the clerk's office of the said Supreme Court to reverse the judgment in the aforesaid suit, and a citation directed to the said James D. Houston, state tax collector, and Allen Jumel, state auditor, defendants, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Samuel S. Brown and James W. Schoenmaker shall prosecute their writ to effect and answer all damages and cost if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) SAMUEL S. BROWN,
[SEAL.] By JOSEPH P. HORNOR,
Their Attorney.
(Signed) JOSEPH P. HORNOR.

Sealed and delivered in the presence of—

We approve and accept the surety. New Orleans, May 21, 1881.
(Signed) WHITAKER & ADAMS,
Attorneys for J. D. Houston and Allen Jumel.

28 Bond approved.
(Signed) E. BERMUDEZ,
Chief Justice.

UNITED STATES OF AMERICA, }
District of Louisiana, } *ss.*

Personally appeared Joseph P. Hornor, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in Pass Christian, Miss., and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) JOSEPH P. HORNOR.

Subscribed and sworn before me this 23d day of May, 1881.
[SEAL.] (Signed) T. McC. HYMAN,
Deputy Clerk, Supreme Court, La.

the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Samuel S. Brown and James W. Schoenmaker, as by their complaint appears. We being willing that error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, chief justice of the said Supreme Court, the 21st day of May, in the year of our Lord one thousand eight hundred and eighty-one.

F. A. WOLFLEY,

[SEAL.] *Clerk of the Circuit Court of the United States for the eastern district of Louisiana.*

Service accepted and citation waived.
New Orleans, 21 May, 1881.

WHITAKER & ADAMS,
Attorneys for Defendants.

(Endorsed:) No. 8244; Samuel S. Brown et als., pl'ffs in error, *versus* Jas. D. Houston, st. tax col'r, & al., def'ts in error; writ of error; filed 23 May, 1881; T. McC. Hyman, d'y clerk.

(Endorsed on cover:) Louisiana Sup. Court. No. 295. Samuel S. Brown and James W. Schoenmaker, plaintiffs in error, *vs.* James D. Houston, state tax collector, and Allen Jumel, state auditor. Filed September 17, 1881; 33 pages.

114-622

FILED
MAR 23 1884

IN THE

Supreme Court United States.

OCTOBER TERM, 1883.

No. 295.

SAMUEL S. BROWN *et al., Plaintiffs in Error,*

vs.

JAMES D. HOUSTON, *State Tax Collector.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief for Plaintiffs in Error.

JOSEPH P. HORNOR,
CHARLES W. HORNOR,
Att'ys for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 295.

SAMUEL S. BROWN *et al.*, *Plaintiffs in Error,*

vs.

JAMES D. HOUSTON, *State Tax Collector.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief for Plaintiffs in Error.

The plaintiffs, citizens of Pennsylvania, enjoined the defendant from selling their property for cash without appraisement to pay a State tax on movable property in the parish of Orleans, State of Louisiana. The injunction was dissolved and the suit dismissed by the Civil District Court, and this judgment was affirmed by the Supreme Court of the State. This writ of error was brought to revise that judgment. The case is reported in 33 La. An., 843.

Facts.

The facts are undisputed. The bituminous coal upon which the assessed taxes are sought to be collected for the year 1880 was mined by plaintiffs in the same year in Pennsylvania, and *there* paid State and local taxes. In the same year, it was brought down from Pittsburgh to New Orleans in flat-boats, and said coal was absolutely on said flat-boats in which it arrived here, and was afloat in the river Mississippi at the time the said tax was assessed thereon; that said coal was held by Brown & Jones, the agents of plaintiffs, for sale on account of plaintiffs by the flat-boat load, and since then more than a half of said coal has been exported from this country on foreign steamships, and the balance has been sold into the interior of this State (Louisiana) for plantation use by the flat-boat load.

That at the time the assessment complained of in this suit was made, Brown & Jones was assessed for and had paid the State taxes due upon their capital stock, and had paid State and city licenses to do business for that year.

The coal was received in New Orleans in its original condition and in its original packages, and was not taken out of said boats until it was sold or exported.

The Louisiana statute of April 9, 1880, act No. 77 of 1880, page 88, of the General Assembly, provides:

Section 1st. "That for the calendar year 1880 and for each and every succeeding calendar year, there are hereby levied annual taxes, amounting in the aggregate to six mills on the dollar of the assessed valuation hereafter to be made of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by the (State) constitution."

It would be useless to quote the property exempt from taxation under article 207 of the constitution of Louisiana of 1879, as the same concerns in no way the questions to be here examined.

These are:

First. Is the coal on which the tax has been assessed "*within the State of Louisiana*" in the eye of the Federal constitution and laws?

Second. Did the coal form a constituent portion of taxable property in and for the State of Louisiana at the time of the assessment?

Third. Is the State tax in question a tax on imports or exports in disguise? Or is it a regulation of commerce among the several States? Or a tax upon freight transported from State to State? Or an invasion of the right to navigate the Mississippi?

Fourth. As citizens of the United States are the rights of the plaintiffs impaired by the law of Louisiana? As citizens of Pennsylvania, are their rights, privileges, and immunities not violated by the Louisiana statute taxing their coal?

Assignment of Errors.

The lower Court erred:

1st. In holding that the tax in question did not violate the article 4, section 2, clause 1, of the Federal Constitution.

2d. That it did not violate article 1, section 8, clause 3 of the same instrument.

3d. That it did not violate article 1, section 10, clause 2, of the same instrument.

Argument.

The iso-thermal lines traversing the territory of the United States show at a glance not only the importance but the absolute

necessity of coal for the existence of their citizens. This necessity prevails over every portion of the Nation. Coal is indispensable in Tennessee as well as Maine; in Oregon and Washington Territory, as well as in Florida and Louisiana: and whilst its deposits exist in comparatively few places and are of very restricted extent, for profitable mining, its freedom from taxation is for every social and economical reason more imperiously demanded than that of sugar, coffee, or any other article necessary to life. And as it was the design of the founders of the Constitution that inter-state commerce should be as nearly free as possible, any state tax upon coal must necessarily be restricted to its proper political sphere and most strictly guarded against any encroachment upon the provisions of the Federal Constitution.

The Mississippi river *borders* several States of the Union, but finally *flows through* Louisiana, emptying itself into the Gulf. "Its shores are empires." The free navigation of this river is almost as necessary for the existence of the Nation, as coal is for the existence of the inhabitants of that State.

All cases of admiralty and maritime jurisdiction are exclusively within the National judicial power, and the sphere of this jurisdiction, "as conferred on the Federal courts by the Constitution, extends wherever ships float and navigation successfully aids commerce, whether *internal* or external."

Hine vs. Trevor, 4 Wall., 563.

Although moored to the wharves or the levee at New Orleans, the coal in the flat-boats was *water-borne* and clearly within the admiralty jurisdiction of the United States.

Leathers vs. Blessing, 4 Morrison's Trans., 779.

The coal in its passage down the river went by eight different States of the Union before reaching Louisiana; and in its traverse was "*for sale*" all the time. On the pretence that the coal was within the territorial limits of each of these States and "*for sale*," could it be taxed by all of them, including Louisiana? Whether tied to a wharf at any of the intermediate landings between its starting point and point of destination, or floating or being towed down the stream makes no essential difference. In brief, whilst the coal was within the admiralty jurisdiction as soon as as it left Pittsburgh, so it continued. It could not emerge from the admiralty or national jurisdiction every time a landing was made, and enter into the exclusive sphere of State jurisdiction, as soon as it was safely moored to the wharf or levee.

A vast amount of inter-state commerce has been transacted for years by steamboats from Pittsburgh, Cincinnati, St. Louis, and other northern cities, penetrating the innumerable water-courses of several Southern States, which boats do nothing else but buy

and sell, exchanging flour and pork for cotton and sugar. Are the owners of these boats and cargoes to be taxed, ascending and descending, by every State bordering on the river?

Whilst we admit the coal *here was* within the *territorial* boundaries of Louisiana, still it was not "*within the State*," in the eye of the Federal Constitution, so as to be liable to State taxation, under the State statute before referred to.

When the question arose, at what point of time foreign imports into the United States became liable to State taxation, and this question manifestly involved *when* the goods came "within the State," it was held that this point of time was not when the ship first entered the harbor, or when the captain reported his arrival at the custom-house, or when the ship was moored to its wharf, or when the goods were discharged and landed from the vessel; but only when the goods contained in the original packages had been disposed of and had become part and parcel of the possessions and commodities of the citizens of the State. The original packages had to be broken, so as not to be *identified* before the State could tax. The prohibition of the U. S. Constitution against State taxation of imports and exports could only be carried out by drawing an hypothetical invisible line of indifference, mentally, between admiralty (National) jurisdiction and the jurisdiction of the several States; and, happily, as we conceive, adopting the unpaid vendor's privilege on movables as fixed by the civil law, article 3230, La. Code, 1870. Whatever may be the judgment of his fellow-citizens upon the opinions of the great jurist on political questions, not a doubt has been suggested as to the wisdom and juridicial genius displayed in Brown vs. Maryland.

The facts in the instant case show the coal was for sale by the flat-boat load, and more than a half of said coal has been exported from this country on foreign steamships. It is plain that this coal was never landed. The usual way, in such cases, is to moor the flat-boat with the coal alongside of the steamship and hoist the coal from the one into the other. There was evidently no change of jurisdiction. Had the plaintiffs made their contract out of Louisiana to furnish these steamships with coal from flat-boats moored alongside of them, the State tax in question would be a direct tax on the export of coal.

Port charges, such as wharfage, &c., are allowed on the principle that they favor and do not injure commerce, and that there is a *quid pro quo* in them. But this principle here fails. This tax cannot be based on any *quid pro quo* from the State. Cannon vs. C. N. O., 20 Wall., 597. She extends no protection whatever in exchange for the tax. "There is nothing else," says Archbishop Whateley—pre-eminently a man of major premises—"that distinguishes *taxation* from *avowed robbery*." (The italics are his.)

A Newyorker or Bostonian may sell his ship at her home port without paying a tax. He takes her to New Orleans, and, on his own quarter-deck, sells her there. The State then taxes the ship. What becomes of his right, privilege and immunity under the Constitution as a United States citizen to sell his ship in any port of the United States he pleases?

The tax in such case is directly an obstruction to inter-state commerce and navigation. In the instant case it is both a tax on imports of coal into Louisiana and a tax on exports out of it.

On reason, therefore, we think the Supreme Court of Louisiana placed their decision in this case on the wrong side of the line, and that in this there is error.

Now, how stand the authorities? It will only be necessary to review the cases relied on by the Supreme Court of Louisiana: 12 Wheaton, 419, 437, Brown vs. Maryland. It is submitted that this authority is in direct accord with all the views hereinbefore presented.

8 Wall., 110, Waring vs. The Mayor. This case seems irrelevant. When the privilege of exemption from the State tax is claimed by a purchaser from the importer, and after a valid delivery to the former, "the merchandise loses its distinctive character as an import"—that is, the property is "*within the State.*"

5 Wall., 475, Pervear vs. The Commonwealth. It is submitted that if there be any analogy between this and the instant case, it is very faint, and the facts and cause of action too remote to be of any utility as an authority here.

8 Wall., 122 Woodruff vs. Parham. The entire foundation on which this opinion rests is that the articles were "brought from one State of the Union *into* another." Our contention is, that the coal taxed was no more, no less, "brought into" Louisiana, than it was brought into Kentucky, Ohio, Mississippi, *etc.*, whilst the flat-boats were floating down the river, or moored to its shores. Stated in its simplest form, the instant case declares as the true principle of inter-state commerce, that all produce coming down the Mississippi and intended for sale, becomes liable to the State taxation in question the moment it comes within the territorial limits of the State of Louisiana, no matter if *water-borne* or not; whether *in transitu* or not.

If your Honors can affirm this proposition of inter-state law there is no error in the judgment. But the authorities quoted in its support are very far from sustaining it.

The tax in this case is on all *property* within the State of Louisiana, and is an "*annual tax.*"

It is not a tax on "sales" of produce. It is not a *personal*, but a *property* tax. It is a license in disguise to navigate the Mississippi. By no means of construction can it be made into anything else. Must the plaintiffs pay a license-tax for bringing coal

down the Mississippi in flat-boats, mooring them to the levee and then selling their coal, one of the indispensable intrumentalities and necessities of inter-state commerce? If so, what becomes of the universal doctrine, that the founders of the Federal Constitution really intended to make our vast inter-state commerce as nearly free as possible? Besides, the right to tax is the right to destroy: the right to impede, obstruct, regulate and possibly destroy all inter-state commerce whatever. This is palpably a regulation of inter-state commerce: a power granted to Congress and denied to the States. The judgment here cannot be affirmed, whilst Brown vs. Maryland stands. "If the States may tax all persons and property found on their territory, what shall restrain them from taxing goods in their transit through the State from one port to another, for the purpose of re-exportation? Or what should restrain a State from taxing any article passing through it from one State to another, for the purpose of traffic? or from taxing the transportation of articles passing from the State itself to another State, for commercial purposes? These cases are all within the sovereign power of taxation, but would obviously derange the measures of Congress to regulate commerce, and effect materially the purpose for which that power was given."

And then, immediately, the opinion adds, *exabundanti cautela, "we suppose the principles laid down in this case, (to) apply equally to importations from a sister State."* And the plain, true, palpable meaning of this "proper addition" to the examples adduced of violations of inter-state commerce is, that no State can tax inter-state commerce:—a doctrine as immutably fixed both on reason and authority as the *suum cuique.*

A tax on "sales" cannot *ex vi terminorum* extend to the plaintiffs' sales of their coal; any more or further than a tax on the sales of the importer of goods imported in their original packages. The analogy of the privilege of the unpaid vendor fails, in cases of a tax on "sales." We all understand what buying and selling means: buying to sell again. Collector vs. Doswell, 16 Wall., 156. These are the sales which the taxation of the State or municipality reached and which was declared constitutional in 8 Wall., 110 and 123, and not such sales as were made by the producers of the coal, who never bought, but only sold. See Ogilvie vs. Crawford County, 7 Fed. Rep., 745, Railroad vs. Nolan, 14 Fed. Rep., 533.

It is true Congress has not directly undertaken to regulate commerce on the Mississippi. In the Revised Statutes no provision to this end may be found; but for its navigation, may be seen appropriations of the most enormous and astounding magnitude paid by all the States with monies raised by *National* taxation. But the silence of Congress cannot be misinterpreted. Louisiana can exercise no legitimate power in imposing restrictions upon inter-

state commerce *via* the Mississippi and its tributaries. Two events have fixed immutably this—the purchase of Louisiana and the results of the late war. "The Mississippi still flows *unvexed* to the sea." The form of taxation, whether imposed on property or person is immaterial, if its exercise conflicts with the power to regulate commerce.

The Supreme Court of Louisiana seem to have taken a simplist view of this case, and in their decision regarded merely their State allegiance and the taxation right of their State not as sacred rights merely, but as the most sacred. But the slightest reflexion would have clearly shown them the fatal results to Louisiana itself, should their judgment be affirmed. The products of Louisiana, sugar, cotton, rice, &c., do not grow in any of the States bordering on the Mississippi above 38° north. Can it be that the taxing power of Kentucky, Ohio, Pennsylvania, &c., may attach to all these products sent up *via* the Mississippi river for sale at Louisville, Cincinnati, Pittsburg, &c., the moment the steamboat carrying them is moored to the landing? The most meagre attention to inter-state comity would have led, we are quite satisfied, to a different determination. State vs. Kennedy. 19 La. An., 397.

We are quite sure that the strictest devotee to State rights and State sovereignty never held the doctrine—taxation no tyranny; or that ever asserted the State's right to tax all property within the State that it could place its hands upon. This power, if it exists anywhere in the United States, rests in the Nation and not in the State. This right to tax existing in a State, is, indeed, admitted to be "*sacred*," but only in a political sense. Taxation cannot be properly and juridically considered as among things sacred, holy, and religious. Whateley's definition is and remains true.

By the act of Congress, February 20, 1811, the people of the Territory of Orleans were enabled to form a constitution and be admitted into the Union; and by the 3d section of the act, 2 S. L., 642, it was provided, "that the river Mississippi and the navigable waters and rivers leading into the same or into the Gulf of Mexico, shall be common highways and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost, or toll therefor imposed by the said State." And this was subsequently made one of the "fundamental conditions and terms upon which the said State is incorporated in the Union." 2 Stat. at Large, 703.

This seems to relieve the case from the objection that, until Congress acts, *i. e.* legislates, Louisiana may make regulations of the commerce of the Mississippi within her boundaries—a claim, however, which we think entirely inadmissible. If Louisiana can successfully tax Pennsylvania coal coming within her limits,